LTL ATTORNEYS LLP
Timothy S. Fox (SBN 280918)
timothy.fox@ltlattorneys.com
300 S. Grand Ave., 14th Floor
Los Angeles, CA 90071
Tel.: 213-612-8900
Fax: 213-612-3773

Attorneys for Defendants
Joseph Prencipe and McLear & Co.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ESOS RINGS, INC.,

Plaintiff,

v.

JOSEPH PRENCIPE; MCLEAR & CO.,

Defendants.

CASE NO. 2:17-CV-1381 RGK (PJWx)

DEFENDANTS' UNOPPOSED NOTICE OF MOTION AND MOTION TO REOPEN CASE AND MOTION TO SEAL A PREVIOUSLY FILED EXHIBIT CONTAINING CONFIDENTIAL INFORMATION; MEMORANDUM OF POINTS AND AUTHORITIES

[Filed Concurrently with Declaration of Joseph Prencipe and [Proposed] Order]

Hearing
Date: May 8, 2017
Time 9:00 a.m.
Crtrm: 850
Judge: Hon. R. Gary Klausner

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on May 8, 2017 at 9:00 a.m., or as soon thereafter as this matter can be heard before the Honorable R. Gary Klausner, located at Courtroom 850, Eighth Floor, United States District Court, Central District of California (Western Division), 255 East Temple Street, Los Angeles, CA 90012, Defendants Joseph Prencipe and McLear & Co. hereby move for an order to reopen this matter and to seal a previously filed public exhibit containing confidential information.

The Exhibit subject to this Motion meets the "compelling reasons" standard for sealing. Defendants seek the sealing of an exhibit that contains highly sensitive trade secret information, disclosure of which would severely harm Defendants' competitive position.

The Motion to Seal is brought pursuant to Local Rule 79-5 and Paragraph 16 of the Court's Standing Order. This Motion is based upon this Notice of Motion and Motion; the supporting Memorandum of Points and Authorities; the supporting Declaration of Joseph Prencipe attached herein.

This Motion is made following the conference of counsel pursuant to Local Rule 7-3, which took place on March 15, 2017. During the parties' meet and confer discussions, counsel for Plaintiff Esos Rings, Inc. informed Defendants' counsel that Plaintiff consents to and will not oppose these motions.

Respectfully submitted,

DATED: April 7, 2017

LTL ATTORNEYS LLP

By */s/ Timothy S. Fox*
Timothy Fox
Attorney for Defendants Joseph Prencipe and McLear & Co.

MEMORANDUM OF POINTS AND AUTHORITIES

Presently pending before the Court are Defendants Joseph Prencipe's ("Prencipe") and McLear & Co.'s ("MCL") two sets of requests: (1) a motion to reopen this case; and (2) a request that the Court seal a Confidential Licensing and Distribution Agreement that was disclosed in Plaintiff Esos Rings, Inc.'s previously filed declaration, (Dkt. No. 10, Ex. 11 (p. 70)). The Court can resolve both issues in sealing this exhibit at issue.

Plaintiff Esos Rings, Inc. will not be opposing the above-mentioned requests.

I. MOTION TO REOPEN CASE

A confidential document was publically filed (as an exhibit) in this action, and Defendants request that the Court reopen this case to have this document sealed.

On February 21, 2017, Plaintiff filed a complaint against Defendants. (Dkt. No. 1.) The gravamen of the complaint concerned an ownership dispute over the rights of a smart ring, one form of which is known as the NFC ring (hereinafter, the "NFC Ring"), U.S. Patent No. 9,313,609.[1] (Joseph Prencipe Declaration ("Prencipe Decl."), ¶ 2.)

The following day, Plaintiff submitted an *ex parte* application for a Temporary Restraining Order (Dkt. No. 10) that contained (as an exhibit) a confidential Strategic Alliance Agreement ("SA agreement") between MCL and Visa U.S.A., Inc. ("Visa"). (Dkt. No. 10-1, pp. 64-74.) Shortly following its submission, the Court denied the application and *sua sponte* dismissed this action because resolving patent ownership does not invoke federal question jurisdiction. (*See* Dkt. No. 13 (citing *Nolen v. Lufkin Indus., Inc.*, 466 F.App'x 895, 899 (Fed. Cir. 2012) ("patent infringement does not arise under patent laws when it requires judicial action to vest title in the party alleging infringement.") (citation omitted)).

[1] The NFC Ring is a wearable ring device equipped with an internal transmitter enabling the wearer to make contactless payments. (Prencipe Decl., ¶ 2.)

However, the SA agreement remains on the docket, unsealed. Therefore, to resolve this matter fully, Defendants respectfully request that the Court reopen this action for the purpose of sealing the SA agreement—for reasons discussed more fully below.

II. MOTION TO SEAL EXHIBIT 11 OF DOCKET ENTRY No. 11

Defendants move to have the SA agreement (Dkt. No. 10-1, Ex. 11), sealed as this document contains trade secret information which could cause significant harm to Defendants and other third parties.

The Ninth and Federal Circuits have recognized that certain financial and licensing information constitutes "trade secrets" that satisfy the "compelling reasons" standard. *See Electronic Arts*, 298 Fed. App'x at 569 (finding that licensing pricing terms, royalty rates, and payment terms constituted information that "plainly falls within the definition of 'trade secrets'" and ordering the sealing of such information in an exhibit that was to be offered at trial); *see also Apple Inc. v. Samsung Elecs. Co.*, 727 F.3d at 1223, 1225-26 (applying the "compelling reasons" test and holding that sealing of information regarding "profit, cost, and margin data" was warranted where suppliers could "extract price increases for components" and therefore "put Apple and Samsung at a competitive disadvantage compared to their current position").

The SA agreement is a license agreement and it mentions confidential financial information concerning MCL's specific financial and pricing data; marketing strategies; and manufacturing and production terms. (Joseph Prencipe Declaration, ¶ 5.) Because the information contained in this exhibit is highly sensitive, continued public disclosure would competitively harm Defendants. (*See* Prencipe Decl., ¶¶ 4-6.)

Indeed, competitors could use this information to increase production and decrease prices. (*Id.*) Suppliers could similarly gain an unfair advantage by using the agreement to determine which features of its own products it could further develop and improve in order to gain market share over the NFC Ring. (*Id.*) Moreover, the marketing, production, and financial data (contained in the agreement) also exposes VISA, a third party, to competitive harm. Because confidential trade secrets of third parties is highly sensitive, there are compelling reasons to seal it as well. *See G&C Auto Body, Inc. v. Geico General Ins. Co.*, 552 F. Supp. 2d 1015, 2008 WL 687372, at *2 (N.D. Cal., 2008) (finding compelling reasons for sealing small amount of confidential third party information attached as exhibit to summary judgment motion). Defendants' (and third party) interest in limiting disclosure therefore outweighs the public's right of access. *Bauer Bros., LLC v. Nike, Inc.*, No. 09cv500–WQH–BGS, 2012 WL 1899838, at *2-4 (S.D. Cal. May 24, 2012) (finding compelling reason to seal cost of goods sold for each product and confidential sales and marketing information).

Accordingly, Exhibit 11 of Docket Entry No. 10-1 should be unavailable for public access because there are compelling reasons to seal this exhibit.

III. CONCLUSION

For the foregoing reasons, Defendants respectfully request the Court grant this motion to reopen this matter and the motion to seal Exhibit 11 of Docket Entry No. 10-1.

Respectfully Submitted,

DATED: April 7, 2017 LTL ATTORNEYS LLP

By */s/ Timothy S. Fox*
Timothy S. Fox
Attorneys for Defendants Joseph Prencipe and McLear & Co.